

No. of Copies rec'd 04

TABLE OF CONTENTS

	Page
SUMMARY.....	i
INTRODUCTION	1
REQUIREMENTS FOR NONDISCRIMINATORY ACCESS TO OSS FUNCTIONS ARE IN PLACE	8
SECTION 271 REVIEW OF RBOC IN-REGION LONG DISTANCE APPLICATIONS SHOULD NOT BE USED TO APPLY NATIONAL PERFORMANCE STANDARDS FOR ACCESS TO OSS FUNCTIONS TO MIDSIZE AND SMALL AND RURAL LECS	17
CONCLUSION	20

SUMMARY

The LCI/CompTel Petition requests that the Commission impose national reporting requirements and performance and technical standards on incumbent local exchange carriers ("LECs") for nondiscriminatory access to operations support systems ("OSS"). This Petition should be denied.

The Commission has identified the OSS functions which incumbent LECs must provide. In addition, the Commission's Orders require that these OSS functions be made available to competitive LECs ("CLECs") on a nondiscriminatory basis on terms and conditions that incumbent LECs provide such functions to themselves, their customer, or other carriers. Incumbent LECs are meeting these requirements. Industry forums are working to develop guidelines for technical interfaces between vastly different network architectures and support systems currently in use by hundreds of incumbent LECs and CLECs. The Telecommunications Act of 1996 ("Act") mandates that requesting carriers negotiate in good-faith with incumbent LECs to implement nondiscriminatory access to OSS functions.

The Commission's *Second Report on Reconsideration* rejected the idea that national standards are necessary for incumbent LECs to provide OSS functions to CLECs. In addition, the Commission determined that incumbent LECs are providing OSS functions to CLECs pursuant to implementation agreements voluntarily negotiated in good-faith, or through arbitration and mediation, approved by state commissions. Under the Commission's regulations, hundreds of agreements between incumbent LECs and CLECs have been implemented. Adoption of new federal regulations will lead to renegotiation of existing agreements.

In addition, midsize, small, and rural LECs will be burden with unnecessary requirements which will create additional technical, operational, and financial hardships for these companies. The role of state commissions under the Act will be rendered moot. Furthermore, in-region long distance competition will be short-circuited. Also, court challenges by state commissions and other interested parties are likely. In short, consumers will be deprived of local competition intended by the Act.

The Petition filed by LCI/CompTel adds nothing to developing competition in the local exchange marketplace. What is clear is that the Commission should affirm its findings in the *Second Report on Reconsideration*.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Petition for Expedited Rulemaking of)	RM 9101
LCI International Telecom Corp. and)	
Competitive Telecommunications Association)	
to Establish Reporting Requirements and)	
Performance and Technical Standards for)	
Operations Support Systems)	

**COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

INTRODUCTION

The United States Telephone Association ("USTA") hereby files its response to the Commission's Public Notice regarding the LCI and CompTel Petition for Expedited Rulemaking ("Petition") involving Operations Support Systems ("OSS").¹ USTA is the principal trade association for the local exchange carrier industry ("LECs").

USTA opposes the adoption of national reporting requirements and performance and technical standards ("national standards") requested by LCI/CompTel in their Petition.² The Commission and all parties involved in the OSS debate realize that a single national telecommunications network does not exist. The public switched network is comprised of

¹ Public Notice DA No. 97-1211 released June 10, 1997.

² *LCI/CompTel Petition for Expedited Rulemaking* filed May 30, 1997.

hundreds of companies using different network architectures and different support systems to provide local exchange carrier services in the United States. Therefore, the ability of incumbent LECs, regardless of size or market location, to provide OSS functions, and in particular formats, to competitive LECs ("CLECs") will naturally vary. The LCI/CompTel Petition ignores this reality of the local exchange carrier marketplace in proclaiming the need for national performance standards as if a single company provided local exchange carrier services throughout the nation. Also, the LCI/CompTel Petition inevitably would impose these same national standards on all CLECs when the needs of those companies are extremely varied.

The LCI/CompTel Petition also presupposes that CLECs have no obligation to negotiate in good-faith. The Act, however, states: ***The requesting telecommunications carrier also has the duty to negotiate in good-faith the terms and conditions of ... agreements.***³ The requirement that parties negotiate in good-faith applies to agreements for resale, number portability, dialing parity, access-to-rights-of-way and reciprocal compensation in Section 251(b)(1-5) of the Act,⁴ and Section 251(c)(2)-(6) for interconnection, access to unbundled network elements, resale, and collocations.⁵

As acknowledged by the Commission in its *Second Report on Reconsideration*, incumbent LECs are providing nondiscriminatory access to OSS functions. Parity of access⁶ by

³ 47 U.S.C. §251(c)(1).

⁴ 47 U.S.C. §251(b)(1-5).

⁵ 47 U.S.C. §251(c)(2)-(6).

⁶ As used throughout these comments, the term "parity of access" refers to the Commission's requirement that incumbent LECs provide, upon request, nondiscriminatory access to operations support systems to CLECs under the same terms and conditions that they

CLECs to OSS functions on terms and conditions equivalent to what incumbent LECs provide themselves is all that is and should be required. The success of CLECs meeting their customer demands depends on the accuracy of information received by incumbent LECs providing OSS functions from CLECs. Incumbent LECs, however, are not involved in the relationship between CLECs and their customers nor do they have any wish to be. Recognition by the Commission of marketplace realities, and the technical complexities of incumbent LECs providing OSS functions on a case-by-case basis to individual CLECs, will lead the Commission to deny the relief sought by LCI/CompTel in their Petition.

A careful reading of the Telecommunications Act of 1996 ("Act"),⁷ the Commission's Orders⁸ and regulations⁹ also provides no support for implementing the demands in the LCI/CompTel Petition. The Commission has addressed the issue of national performance standards and rejected such requirements as substitutes for immediate implementation of nondiscriminatory access to incumbent LECs' existing OSS functions. Moreover, there is no

provide these services to themselves, their customers, or other carriers. *See, e.g., First Report and Order* at 155, ¶316; at 252-253, ¶¶516-517; at 255, ¶523; *Second Report on Reconsideration* at 5, ¶9.

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§151 *et seq.*

⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*First Report and Order*), motion for stay denied, 11 FCC Rcd 11754 (1996), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *further recon. pending appeal sub nom. Iowa Utils.Bd. v. FCC and consolidated cases*, No. 96-3321 *et al.*, partial stay granted pending review, 109 F.3d. 418 (8th Cir. 1996), order lifting stay in part (8th Cir. Nov.1, 1996), *motion to vacate stay denied*, 117 S. Ct. 429 (1996).

⁹ 47 C.F.R. §51.319(f).

evidence presented by the LCI/CompTel Petition that incumbent LECs are not pursuing voluntary negotiations, in good faith, pursuant to Sections 251 and 252 of the Act, or through mediation and arbitration under the auspices of state commissions, to arrive at comprehensive agreements for interconnection, the sale of unbundled network elements, resale of services and the requisite OSS components required by CLECs. Indeed, the State Telephone Regulation Report¹⁰, the X-Change Report,¹¹ and USTA's own survey¹² establish that hundreds of interconnection agreements have been approved by state commissions. These agreements are clear evidence that marketplace negotiations between parties are working to implement the requirements of the Act, including nondiscriminatory access to OSS functions.

Equally important, incumbent LECs, CLECs and other interested parties are engaged in a number of industry forums that are recommending technical interface standards for OSS.¹³

¹⁰ Vol. 15, No. 12 dated June 12, 1997 (covering the eastern United States regarding interconnection agreements in 26 states of the NYNEX, Bell Atlantic, BellSouth, and Ameritech regions plus Connecticut and the District of Columbia, and Vol. 15, No. 13 dated June 26, 1997 (covering the western United States regarding interconnection agreements in 24 states of the SBC, Pac Tel, and U S WEST regions).

¹¹ X-Change, May 1997 at 64-73. The data compiled in this report covers CLEC certifications, interconnection agreements and terms, resale, appeals, universal service and Section 271 proceedings pending in states in the Ameritech, Bell Atlantic, BellSouth and NYNEX regions. This information was compiled by the Washington, D.C. law firm of Kelley Drye and Warren.

¹² USTA's Survey of Interconnection and Arbitration Agreements showing 1197 interconnection agreements among the RBOCs and GTE and 79 pending arbitrations as of June 30, 1997.

¹³ For example, the Full Ordering and Billing Forum and Telecommunications Industry Forum meet regularly and are supported by all industry segments. *See also, First Report and Order* at 249-250, ¶513 which reviews the various industry organizations and committees involved in developing national standards for electronic interfaces for "inter-telecommunications company transactions." Recently, the FCC's Common Carrier Bureau

Incumbent LECs are working to implement technical interface standards where appropriate to do so. Similarly, incumbent LECs continue to work with state commissions to meet the unique network architecture and different support system needs of individual companies while ensuring the delivery of the most cost-effective telecommunications services to customers and competitors alike. In addition, incumbent LECs have provided demonstrations of OSS in public forums, most recently on May 27 in a USTA sponsored event.¹⁴ Also, a number of incumbent LECs participated in an FCC sponsored forum on OSS on May 28 and 29.¹⁵ What these industry and public forums have demonstrated is that incumbent LECs and CLECs are working through the complexity of issues associated with OSS functions, that network applications vary, establishment of a single set of national standards or protocols is difficult to create and will take years to accomplish if at all, and that individual CLECs have different demands which in many cases exceed the scope of OSS services the incumbent LECs provide to themselves.

Private negotiations between incumbent LECs and CLECs with state commission approval of industry agreements, and the development of appropriate technical standards through participation in industry forums are where the efforts of incumbent LECs and CLECs must be directed. Certainly, the Commission's staff can attend industry forums to ensure that the

Operations Support System Forum discussed the scope of industry efforts to develop nationwide standards. *See, e.g.,* Comments of Susan Miller, Vice President and General Counsel Alliance for Telecommunications Solutions, Glen Sirles of SBC, and Dianne Moore of MCI, Transcript at 14-41 (May 28, 1997).

¹⁴ The participants were Ameritech, Bell Atlantic, GTE, and NYNEX.

¹⁵ Common Carrier Bureau Operations Support Systems Forum, FCC News Release dated May 19, 1997. LEC participants included Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, SBC, SNET, and U S WEST.

industry is working on these issues in an effective manner. Additional federal regulations are not needed, are not supported by the Act, and may serve to impede the progress that has been made in industry forums and through private negotiations between individual parties. For one thing, it would take time for the Commission to adopt such regulation. Also, the adoption of more federal regulations may require the renegotiation of hundreds of agreements already negotiated between incumbent LECs and CLECs and approved by state commissions. The confusion that new federal regulations are likely to cause, and the corresponding costs associated with reviewing prior agreements in light of new regulations are further reasons why the Commission should not interject itself into a process that is clearly working. Federal regulations were never intended to be a substitute for private negotiations between incumbent LECs and CLECs and the Commission should not impose the LCI/CompTel one-size-fits-all approach as a replacement for the bargaining process between parties intended by the Act.¹⁶ Simply because some private negotiations between incumbent LECs and CLECs may be contentious, this is not a basis for impeding the bargaining process that Congress mandated be used by incumbent LECs and competitors to arrive at mutually agreeable terms and conditions for unbundled network elements like OSS. The very task of incumbent LECs providing OSS functions to hundreds of CLECs with varying needs is by definition a complex undertaking. USTA's members, however, are meeting this requirement to provide parity of access to OSS functions today.

Incumbent LECs should be judged on whether they are providing parity of access to OSS functions by state commissions, not under a performance standard that CLECs would have the

¹⁶ 47 U.S.C. §252(a)(1).

Commission approve. The Commission's regulations require incumbent LECs to provide nondiscriminatory access to OSS functions. When incumbent LECs provide OSS functions pursuant to an implementation schedule approved by state commissions, the responsibility of incumbent LECs to CLECs ends. Incumbent LECs are not responsible, nor can they be held responsible, for whether LCI/CompTel customers are being served by CLECs. Clearly, only CLECs are responsible for making use of OSS functions to serve their customers. Moreover, responsiveness to CLECs depends on the information provided to incumbent LECs. If the information provided by CLECs is incomplete or unclear, quite naturally the ability of incumbent LECs to process requests for OSS functions will be adversely affected.

Under the circumstances, USTA strongly urges the Commission to deny the relief sought by LCI/CompTel in their Petition. The Commission has already rejected the adoption of national standards in the *Second Report on Reconsideration*. The proper forum for resolution of OSS needs of CLECs is not the Commission. CLECs should continue to pursue agreements on terms and conditions for OSS in individual private negotiations, before state commissions in arbitration and mediation proceedings and, where necessary, appellate relief in federal district court as mandated by the Act.¹⁷ Similarly, CLECs must continue to work with incumbent LECs in industry forums to develop OSS standards and protocols for electronic inter-telecommunications company transactions which may serve as guidelines for individual incumbent LECs and state commissions to use in devising the most cost-efficient and effective

¹⁷ 47 U.S.C. 252(e)(6). This provision provides that "In any case in which a State commission makes an determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section."

means for individual incumbent LECs to serve their customers and meet their obligations under the Act to negotiate private contractual agreements approved by state commissions for nondiscriminatory access by CLECs to OSS functions.

REQUIREMENTS FOR NONDISCRIMINATORY ACCESS TO OSS FUNCTIONS ARE IN PLACE

The LCI/CompTel Petition requests that the Commission adopt national performance standards that would require each incumbent LEC to: (1) identify every OSS function in which it has established performance standards and disclose the nature of the standard(s); and (2) identify each OSS function in which no performance standard has been established.¹⁸ In addition, the Commission is requested to develop minimum performance standards for each OSS function, and establish any other OSS requirements, including beta testing for OSS functions used in conjunction with unbundled network elements and resale.¹⁹

The LCI/CompTel proposals reflect the view of just one industry segment, which ignores the complexity of meeting OSS requirements, the history of local exchange carrier service, the network architecture of hundreds of companies involved in providing this service, and the efforts by industry forums to develop appropriate technical interface standards and guidelines that may be useful in deploying OSS functions. The performance standards proposed by LCI/CompTel in Appendices A and B of their Petition are nothing more than an attempt to gain binding contractual terms and conditions without the benefit of private negotiations mandated by the Act.

¹⁸ Public Notice DA No. 97-1211.

¹⁹ *Id.*

Couched in self-serving language, Appendices A and B are simply gold-plated wish-lists of terms and conditions that LCI and CompTel members are requesting be adopted by the Commission to guarantee the success of CLECs in a competitive market. Should the Commission impose non-negotiated performance standards on incumbent LECs when the Commission has recognized that incumbent LECs have provided interface designs and OSS implementation schedules pursuant to approvals by state commissions? Is the Commission prepared to require CLECs to meet the performance standards they propose? In short, are LCI and other CompTel members and CLECs in general prepared to provide the same level of guarantees to its competitors as it seeks from incumbent LECs? The answer to these questions is no.

The Act mandates that incumbent LECs and CLECs negotiate in good-faith the terms and conditions for interconnection, access to unbundled elements on a nondiscriminatory basis, and resale.²⁰ The adoption of the LCI/CompTel performance standards would render useless private negotiations between incumbent LECs and CLECs because terms and conditions would be imposed upon the parties by the Commission. Moreover, the role of state commissions in approving such agreements would no longer be required because the performance standards proposed in the LCI/CompTel Petition would rule out any other approach. The Commission must distinguish between the parity of access to OSS functions that incumbent LECs are providing to CLECs, and the non-negotiable performance standards that LCI/CompTel would require incumbent LECs to meet. If LCI and CompTel members believe that these performance

²⁰ 47 U.S.C. §251(c)(1).

standards should be adopted, they are required to negotiate these terms and conditions and seek state approval of them, or appeal state commission orders to federal district court.

The LCI/CompTel Petition suggests that CLECs are pursuing resolution of OSS issues before state commissions.²¹ According to the LCI/CompTel Petition the “OSS battle ... is raging throughout the states.”²² The resolution of OSS issues is appropriately before state commissions as intended by the Act. According to the Act, each incumbent LEC has the obligation to provide interconnection, services, or network elements pursuant to Section 251 upon request.²³ Under Section 252(a)(1), these agreements are binding upon the parties like all contracts negotiated in the commercial marketplace.²⁴ Nondiscriminatory access to OSS functions involves access to intrastate local exchange carrier services in which state commissions approve agreements reached between incumbent LECs and CLECs.²⁵ It seems, however, that the Petition filed by LCI/CompTel is an effort to undo agreements approved by state commissions, or to require incumbent LECs to meet national performance standards not required by any reading of the Act. The Commission should reject this attempt by LCI/CompTel to obfuscate the requirements of the Act, the Commission’s Orders and regulations. Parity of access, not non-negotiable performance standards, are what incumbent LECs must provide CLECs with respect to OSS functions.

²¹ See *LCI/CompTel Petition Table of Sources and Source Conventions* at viii-xiv citing 81 references most of which refer to CLEC filings in state commission proceedings.

²² *Id.* at 2.

²³ 47 U.S.C. §252(a)(1).

²⁴ *Id.*

²⁵ 47 U.S.C. §§252(a)(1) and 252(e).

The Commission's *First Report and Order* established OSS as an unbundled network element that incumbent LECs must provide to CLECs:

We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under Section 251(c)(3) Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service."

[W]e conclude that ... operations support systems functions are subject to the nondiscriminatory access duty imposed by section 251(c)(3) [for unbundled network elements], and the duty imposed by section 251(c)(4) to provide resale services under just, reasonable and nondiscriminatory terms and conditions.²⁶

The Commission also identified the functions that must be provided:

In all cases, ... we conclude that in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4). Incumbent LECs that currently do not comply with this requirement of section 251(c)(3) must do so as expeditiously as possible, but in any event no later than January 1, 1997.²⁷

In providing OSS functions to CLECs, incumbent LECs "must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers."²⁸

²⁶ *First Report and Order* at 252-253, ¶¶516-517.

²⁷ *Id.* at 256, ¶525.

²⁸ *Id.* at 155, ¶316; at 255, ¶523.

The Commission recognized that although technically feasible, nondiscriminatory access to OSS functions would require modifications to existing systems to accommodate CLECs.²⁹ According to the Commission, individual incumbent LEC OSS functions may not clearly mirror the definitions adopted for OSS functions, thus “incumbent LECs must provide nondiscriminatory access to the full range of functions within pre-ordering, ordering, provisioning, maintenance and repair and billing enjoyed by the incumbent LEC.”³⁰

Also, in the *First Report and Order*, the Commission discussed at length the role state commissions, including the New York, Georgia, Illinois, and Indiana commissions, have played in establishing requirements for implementation and access to OSS functions.³¹ Many states have passed laws or adopted regulations regarding electronic interfaces and specific timetables for parity of access to OSS functions.³² The Commission stated ***We recognize the lead taken by these states and others, and we generally rely upon their conclusions in this Order.***³³

What is obvious from the Commission’s *First Report and Order* is the presence of clearly defined requirements that incumbent LECs must meet to provide OSS functions on a case-by-case basis to CLECs for unbundled network elements under Section 251(c)(3) and for resale of LEC services under Section 251(c)(4) on a nondiscriminatory basis pursuant to terms and conditions enjoyed by the incumbent LEC. This process involves contracting between incumbent

²⁹ *Id.* at 256, ¶524.

³⁰ *Id.* at 255, note 1273.

³¹ *First Report and Order* at 253-254, ¶519.

³² *Id.*

³³ *Id.*

LECs and CLECs. As Katheryn Brown of the Department of Commerce, National Telecommunications Information Administration stated "optimally the relationship between the carriers should be a contractual one. We have to move ... away from a regulatory prescriptive approach to a contractual approach."³⁴ What is equally clear is that arriving at negotiated agreements for OSS functions is complex. The comments of Don Russell, Chief of the Telecommunications Task Force of the Department of Justice, further establishes that federal officials recognize the complexity of incumbent LECs meeting OSS requirements of CLECs:

The second issue that I think is apparent from all the remarks we have heard this morning is the complexity of accomplishing this. The systems that are in place now are systems that were developed over many years ... by incumbents. They were developed with very large investments over many, many years by the incumbents. They work extremely well for the incumbents' own purposes, but it's going to be very difficult and costly and time consuming ... to make those systems available to new competitors that are entering the marketplace and to make sure that adequate interfaces are developed and implemented to deal with the new competitive environment

[W]e should be thinking about these issues not as simply a one time issue, or a yes or no issue, but more as an ongoing process that the industry will be going through. I don't think the law requires absolute perfection in terms of the interfaces that are developed. I don't think that's possible in this world....

The networks that are involved here, the interfaces between the companies are complicated today, but they will continue to evolve over a long period of time. The kinds of business dealings between the new entrants and incumbents will change over time. The technology will change over time, and the consumer demands in the marketplace will be changing as well. And I think what

³⁴ See Common Carrier Bureau Operations Support Systems Forum, Comments of Katheryn C. Brown, Transcript at 65 (May 28, 1997).

that means is that in dealing with OSS issues, in dealing with the interfaces between incumbents and the new entrants that are competing against them, there will have to be a continuing process by which these issues are worked out....

There has been, from our perspective, a tremendous amount of progress that has been made over the last year or so under the Telecommunications Act.³⁵

Given that incumbent LECs may provide OSS functions differently, and there are no universally applicable standards and protocols for electronic interfaces including gateways to OSS functions, application of a single national performance standard requested by LCI/CompTel is impractical, unnecessary, administratively burdensome, would require additional financial expenditures, and is inconsistent with the Act and the Commission's *Second Report on Reconsideration*.

The *Second Report on Reconsideration* supports USTA's position that incumbent LECs are meeting existing requirements adopted in the *First Report and Order* and that no further action by the Commission is necessary. Although the Commission denied Petitions by Sprint and the Local Exchange Carrier Coalition to extend the implementation schedule for OSS pending the development of national standards, the Commission reiterated that at a minimum, incumbent LECs must establish and make known to requesting CLECs interface design specifications the incumbent LECs will use to provide access to OSS functions.³⁶ In addition, incumbent LECs must provide OSS functions "only if a telecommunications carrier has made a request for access to OSS functions pursuant to 251(c)(3), and the actual provision of access to

³⁵ See Common Carrier Bureau Operations Support Systems Forum, Comments of Don Russell, Transcript at 71-73 (May 28, 1997).

³⁶ *Second Report on Reconsideration* at 5, ¶8.

OSS functions by an incumbent LEC must be governed by an implementation schedule established through negotiation or arbitration”³⁷ and approved by state commissions. Also, incumbent LECs were reminded that OSS functions must be provided on a nondiscriminatory basis for unbundled elements provided under Section 251(c)(3) and Section 251(c)(4) for resale of services on terms and conditions equivalent to “OSS functions that an incumbent [LEC] uses for its own internal purposes or offers to its customers or other carriers.”³⁸ Furthermore, an incumbent LEC was instructed to provide “equivalent electronic access to requesting carriers in the provision of unbundled network elements or services for resale that it is obligated to provide pursuant to an agreement approved by the state commission.”³⁹

Clearly, the Commission’s Orders require incumbent LECs to provide access to OSS functions on a nondiscriminatory basis, including electronic interface where available, on terms and conditions equivalent to what the incumbent LEC provides itself, customers, or other carriers, pursuant to private negotiation or arbitration of agreements approved by state commissions.⁴⁰ Equally important, in the *Second Report on Reconsideration*, the Commission rejected delaying implementation of nondiscriminatory access to OSS functions until national standards were fully developed by stating that *it is apparent from arbitration agreements and ex*

³⁷ *Id.*

³⁸ *Id.* at 5, ¶9.

³⁹ *Id.* at 6, ¶9.

⁴⁰ Rural and 2% incumbent LECs may seek relief from OSS requirements under Section 251(f)(1) & (2) of the Act, respectively. *Id.* at 7, ¶12; 47 U.S.C. §251(f)(1) & (2).

*parte submissions that access to OSS functions can be provided without national standards.*⁴¹

The Commission further concluded that *We continue to encourage parties to develop national standards for access to OSS functions, but decline to condition the requirement to provide access to OSS functions upon the creation of such standards.*⁴² According to the

Commission, there was no basis on which the Commission should *initiate enforcement action against incumbent LECs that are making good faith efforts to provide such access within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission.*⁴³ Negotiated agreements contain measurements for comparing the

performance of incumbent LECs in providing OSS functions equivalent to the level of performance the incumbent LECs and its customers, or other carriers receive.⁴⁴ These agreements are approved by state commissions. Within these state commission approved agreements are implementation schedules which vary from agreement to agreement depending upon the needs of the parties. The Commission should not mandate national performance standards because parties are capable of negotiating agreements pursuant to individual needs.

The record also establishes that CLECs have no basis on which to challenge the integrity of efforts made by incumbent LECs to negotiate agreements and provide nondiscriminatory access to OSS functions. As LCI's Senior Vice President recently stated access to OSS functions

⁴¹ *Second Report on Reconsideration* at 7, ¶13.

⁴² *Id.*

⁴³ *Id.* at 7, ¶11.

⁴⁴ *See, e.g.,* the Comments of GTE and Ameritech in which both carriers confirm that performance standards are negotiated into existing interconnection agreements. Common Carrier Bureau Operations Support Systems Forum, Transcripts at 98-101 (May 28, 1997).

by CLECs “is a matter of complexity” and that LCI does not “impugn ... bad faith” negotiation by incumbent LECS in meeting the needs of CLECs.⁴⁵ Moreover, all facets of the industry are involved in developing standards for electronic interface for inter-telecommunications carrier transactions. Yet to impose national performance standards requested by LCI/CompTel, absent standards and protocols for electronic interface of OSS functions, literally puts the proverbial cart before the horse. An important purpose of industry forums is to create guidelines and technical interface standards for interoperability between incumbent LECs and CLECs for access to electronic interfaces and gateways that allows access to OSS functions.⁴⁶ The very complexity of this task is daunting given the number of incumbent LECs and the diverse network operating systems in use required in meeting the evolving needs of CLECs.

**SECTION 271 REVIEW OF RBOC IN-REGION
LONG DISTANCE APPLICATIONS SHOULD NOT
BE USED TO APPLY NATIONAL PERFORMANCE
STANDARDS FOR ACCESS TO OSS FUNCTIONS
TO MIDSIZE AND SMALL AND RURAL LECS**

Commission and Justice Department review of RBOC Section 271⁴⁷ applications to provide in-region long distance service do not grant the Commission jurisdictional authority to establish the unprecedented intrusions on the obligation of parties to negotiate in good-faith that

⁴⁵ See Common Carrier Bureau Operations Support Systems Forum, Comments of Anne K. Bingaman, Transcript at 45 (May 28, 1997).

⁴⁶ Interoperability is a concept that should also apply to CLEC to CLEC communications to further the seamless flow of telecommunications services.

⁴⁷ 47 U.S.C. §271(c).

are proposed in the LCI/CompTel Petition.⁴⁸ Should the Commission use its review of Section 271 applications, or its general authority to regulate interstate communications, to impose OSS performance standards recommended in the LCI/CompTel Petition, such action will eviscerate the Act's Section 251 and 252 provisions favoring private negotiations between parties and interfere with the authority of state commissions, under the Act, to approve intrastate agreements. State commissions are vested with jurisdictional authority to rule on whether incumbent LECs are meeting the requirements to provide nondiscriminatory access to unbundled network elements including the availability of OSS functions to CLECs. Moreover, application of the Commission's Section 271 authority to establish additional OSS requirements for all LECs would not be appropriate because non-RBOC incumbent LECs are not subject to Section 271 regarding in-region long distance. For example, GTE and many midsize LECs including ALLTEL, SNET, Frontier, Cincinnati Bell, Century, Lufkin-Conroe, ATU, Illinois Consolidated and Horry, and numerous small and rural LECs are already providing long distance services in-region.

⁴⁸ See also, AT&T's letter to A. Richard Metzger, Jr., Deputy Chief, FCC Common Carrier Bureau dated July 3, 1997 which contained a laundry list of unsubstantiated allegations of non-compliance by incumbent LECs with Commission's Orders, and requests for new competitive rules and regulations including performance for access to OSS functions. Currently, state commissions, incumbent LECs and competitors are coming to grips with the requirements of implementing the Commission's interconnections Orders and regulations which are less than a year old. State commissions have reviewed hundreds of agreements reached between parties which are based on countless hours of negotiations at untold expense. The regulatory relief requested by AT&T and LCI/CompTel is unnecessary and, if adopted, will lead to confusion, interference with the role of state commissions under the Act, renegotiation of existing agreements, likely court challenges, and monumental expense.

Like the RBOCs seeking authority to serve their customers with in-region long distance service, non-RBOC LECs are also negotiating to provide OSS functions pursuant to requests from CLECs, are participating in arbitration and mediation proceedings before state commissions, and where appropriate are exercising the right to relief under Section 251(f)(1) and (2). Also, midsize, small, and rural LECs have different individual network architecture and operational support needs than RBOCs. In addition these non-RBOC LECs lack the financial resources to implement imposed performance standards. Thus, any new federal requirements would severely impact non-RBOC LECs technically, operationally and financially. USTA encourages the Commission not to use the Section 271 application process to impose national performance standards on incumbent LECs not affected by the Commission's review and where clearly the existing process has produced privately negotiated agreements on access to OSS functions or arbitrated agreements which have been approved by state commissions in accordance with the Act.

**STATE COMMISSIONS AND FEDERAL DISTRICT COURTS
ARE THE APPROPRIATE FORUMS FOR RESOLUTION OF
OSS ISSUES UNDER THE ACT**

Unless the LCI/CompTel Petition addresses claims or allegations in which a state commission failed to act regarding OSS issues, Section 252(e)(6) makes clear that the Commission should take no action to impede the authority of state commissions to act. Section 252(e)(6) of the Act provides that Commission action, and subsequent judicial review, is the sole

remedy “In a case in which a State fails to act as described in 252(e)(5).”⁴⁹ Therefore, the clear intent of the Act is that the Commission should take no action regarding CLECs’ nondiscriminatory access to OSS functions where state commissions have issued orders approving voluntary or arbitrated agreements between parties on a case-by-case basis.

Even assuming that the Commission could act where a state commission has acted under Section 252(e)(5) of the Act, or act under Section 252(e)(6) where a state commission has failed to do so, the Commission should not impose blanket requirements as suggested by LCI/CompTel, where case-by-case rulings by the Commission are warranted. State commissions, however, are best able to determine how incumbent LECs can and should provide access to OSS functions in accordance with the mandate of the Act and the Commission’s Orders. The Commission has consistently acknowledge the lead role that state commissions are playing in ensuring parity of access to OSS functions.

CONCLUSION

LCI/CompTel demand OSS functions as if a single incumbent LEC network has always been in place. In reality, the public switched network is a network of networks operated by companies of all shapes and sizes with various capabilities. Local exchange carrier service has historically been provided by hundreds of companies using various network architectures and support systems. Incumbent LECs vary in size, location, financial resources and technical ability to provide OSS functions. A one-size-fits- all approach proposed by LCI/CompTel cannot work

⁴⁹

47 U.S.C. §252(e)(6).

unless CLECs are prepared to pay for a complete overhaul of the existing public switched network.

Incumbent LECs and CLECs are negotiating agreements in good-faith, on a case-by-case basis, and incumbent LECs are providing nondiscriminatory access to OSS functions. Current requirements, under the Commission's regulations, that incumbent LECs provide OSS functions to CLECs on a nondiscriminatory basis on terms and conditions equivalent to what the incumbent LECs provide themselves are sufficient. Most importantly, incumbent LECs and CLECs are negotiating agreements which may include performance standards that meet the individual interests of the parties as intended by the Act. These agreements are being approved by state commissions across the country. Consistent with the Act, CLECs may appeal state commission orders to federal district court. Adoption of the LCI/CompTel proposal would violate the mandate of the Act that companies engage in individual, private negotiations to arrive at terms and conditions that meet their specific needs. Moreover, industry forums have demonstrated the complexity of developing solutions to integrating different networks, and establishing standards and protocols for OSS functions. USTA urges the Commission to deny the relief sought in the LCI/CompTel Petition and allow private negotiations, state commission approvals, and appellate review to govern the process of ensuring that CLECs receive access to OSS functions on a nondiscriminatory basis in a manner equivalent to what incumbent LECs provide to themselves, their customers, or other carriers.